



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 09, 2023

IN THE MATTER OF:

Appeal Board No. 628822

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective August 25, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by COLLINS BUILDING SERVICES prior to August 25, 2022, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed March 24, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was hired as a porter and promoted to the doorman for an apartment building which housed university faculty members. He worked at this position for over thirteen years. As doorman, the claimant was required to be alert, to ask visitors for identification, and to log visitors into a logbook. Residents were required to possess identification badges; if the claimant did not recognize the resident, the employer required the claimant to check for identification before entry.

In 2013, the employer had issued a written disciplinary notice to the claimant

for sleeping on the job and had then suspended the claimant for such conduct. The employer's written disciplinary notice also indicated that any further disciplinary matters could lead to discipline, up to and including discharge. The employer had also verbally warned the claimant for his use of a cellular telephone while on duty.

On August 24, 2022, the claimant was working his regular shift. At approximately 5:40 am, the claimant was seated at the reception desk with his head down, intently watching his cellular telephone. An individual, who did not reside in the building, walked into the lobby, walked past the reception desk, and strolled over to the elevators, all unbeknownst to the claimant. This individual then took the elevator, to the roof, and tried to access the roof. An alarm sounded. The individual, who was later determined to be intoxicated, immediately fled the building. When the employer ascertained what had occurred, the employer immediately suspended and then discharged the claimant, that same day, for allowing an unauthorized individual access into the building.

OPINION: The credible evidence establishes that, on August 24, 2022, the claimant, while on duty, allowed a stranger unauthorized access to the employer's faculty housing. Although the claimant contends that a warning was required so to place the claimant on notice regarding this type of problematic behavior, the contention is not persuasive. In so concluding, we note that at hiring, the employer had instructed the claimant to prohibit unauthorized access to the building and to require identification upon entry. We note too, that the employer had previously warned the claimant for his use of a cellphone while on duty. Nevertheless, the claimant, while intently engaged in his cellular telephone, allowed unauthorized and unfettered access to an intoxicated stranger who had then roamed the building and attempted to access the roof. In so doing, the claimant neglected the most basic of function as a doorman - to monitor access to the building. His failure to do so not only endangered the safety of residents but also was detrimental to the employer's reputation. The claimant knew or should have known that being on a cellular telephone such that he failed to monitor individuals entering the building, jeopardized his continued employment. Hence, we find that the claimant, in failing to maintain continued vigilance while on duty as a doorman, committed misconduct in the course of his employment. Accordingly, we conclude that the claimant was separated from his employment under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective August 25, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to August 25, 2022, cannot be used toward the establishment of a claim for benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER